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## Inter-Carrier Compensation for ISP-Bound Traffic

CC Docket # 99-68  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CoreComm Limited ("CoreComm"), by its undersigned counsel, hereby submits its comments pursuant to the Notice of Proposed Rulemaking issued February 26, 1999.<sup>1</sup> Any rules that are issued as a result of this proceeding should ensure speedy resolution of unresolved disputes regarding inter-carrier compensation for traffic bound for Internet service providers ("ISPs"), and, to the maximum extent possible, provide for uniform treatment of such compensation. Competitive local exchange carriers ("CLECs") must have certainty on this issue in order to establish and implement business plans, and the incumbent local exchange carriers ("ILECs") have demonstrated total intransigence to pay CLECs for the transport and termination of ISP-bound traffic. Bilateral negotiations on this issue have resulted in almost total failure because GTE has no incentive and the regional Bell operating companies ("RBOCs") have almost no incentive to resolve this matter. CoreComm requests that the Commission recognize that negotiation on this issue will likely result in failure and arbitration of the issue will be costly to CLECs, and any federal rules should minimize the delay and expense of arbitration.

<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68 (rel. Feb. 26, 1999) ("Declaratory Ruling" or "NPRM").

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## INTRODUCTION

CoreComm, through its subsidiaries, is a CLEC that provides resold local exchange service to business and residential customers and plans to begin offering such over its own facilities to customers, including ISPs, in the near future. In addition, CoreComm subsidiaries own and operate ISPs. CoreComm therefore has a significant interest in the outcome of this rulemaking proceeding. To ease the Commission's burden in reviewing them, CoreComm's comments are provided to the Commission in form of brief statements with bullet headings.

## ARGUMENT

### I. NEGOTIATION FOR COMPENSATION FOR THIS TRAFFIC HAS FAILED

- ILECs in general, and GTE in particular, have little, if any, incentive to open their monopoly markets to new entrants.<sup>2</sup> RBOCs continue to seek Section 271 in-region interLATA authority while defining the minimum requirements of Sections 251 and 252 downward.
- ILECs have uniformly refused payment of compensation to CLECs for the transport and termination of traffic to ISPs, even though the traffic is treated no differently than any other local exchange traffic. There is no reason to believe ILECs will not continue this intransigent position.<sup>3</sup>

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<sup>2</sup> As the Commission recognized in its *Local Competition Order*, "Generally, the new entrant has little to offer the incumbent. Thus, an incumbent LEC is likely to have scant, if any, economic incentive to reach agreement." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325 (rel. Aug 8, 1996) at Para. 141 ("*Local Competition Order*").

<sup>3</sup> To date, 30 state commissions and 4 courts reviewing the decisions of the state commissions have required ILECs to pay reciprocal compensation to CLECs for the transport and termination of telecommunications to ISPs. *See* Declaratory Ruling at Paras. 9, 24, 26. Regardless, since the Declaratory Ruling was released, Bell Atlantic has notified CLECs that it will no longer compensate CLECs to transport and terminate traffic to ISPs originated by Bell Atlantic customers, even in states, such as Maryland, that have ruled squarely against Bell Atlantic on this issue.

- Based upon the experience of CoreComm and other CLECs, negotiation is not likely to resolve the issue of inter-carrier compensation for ISP-bound traffic, and arbitration will be inevitable.<sup>4</sup>

## **II. WHILE ARBITRATION IS APPROPRIATE, IT WILL BE COSTLY AND TIME-CONSUMING FOR CLECS**

- Arbitration is an appropriate counterbalance to the ILECs' market dominance. Although imperfect, arbitration provides some minimum protections to parties without negotiating power, because it guarantees an eventual resolution to the dispute by an impartial, knowledgeable decision-maker, within a structured framework.
- Nevertheless, arbitration is not a perfect solution from the CLEC's perspective. The ILEC has little incentive to achieve a speedy resolution, and the costs and delay inherent in arbitration will weigh more heavily on the CLEC. Any procedural mechanism that forces CLECs to devote their limited resources to litigation and that also delays resolution of the issue serves the interests of ILECs.
- Because the Commission has ruled that ISP-bound traffic falls outside the scope of Section 251,<sup>5</sup> the Commission's rules regarding arbitration for ISP-bound traffic are not limited by Sections 251 and 252.
- Federal rules regarding arbitration should be designed to achieve speedy results at minimum expense for ISP-bound traffic.
- States have expertise in arbitrating interconnection disputes, and should be authorized to conduct arbitrations for inter-carrier compensation for ISP-bound traffic following specific federal rules that are designed to encourage expedited and uniform administration and decision-making.

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<sup>4</sup> In negotiations with CoreComm, GTE recently stated that it would not agree to pay reciprocal compensation for ISP-bound traffic pending the outcome of this proceeding, nor would it agree to pay compensation for such traffic on a retroactive basis if the outcome of this proceeding calls for payment for such traffic.

<sup>5</sup> CoreComm disagrees with the Commission that ISP-bound traffic falls outside the scope of Section 251. First, telecommunications traffic to ISPs is local traffic because it terminates when it is delivered to the ISP. Second, the text of Section 251(b)(5) does not limit reciprocal compensation to local traffic. The limitation of reciprocal compensation to local traffic was imposed by the Commission in the *Local Competition Order* on the grounds that non-local traffic would be subject to access charges. *Local Competition Order* at Paras. 1033-1035.

### **III. FEDERAL RULES SHOULD BE SPECIFIC IN ORDER TO NARROW THE RANGE OF MATTERS FOR STATE COMMISSIONS TO CONSIDER**

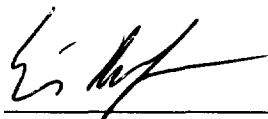
- Specific federal rules on inter-carrier compensation for ISP-bound traffic will facilitate resolution by narrowing the scope of state commission arbitration proceedings. The following elements should be included in the federal rules on inter-carrier compensation for ISP-bound traffic, at a minimum:
  - Inter-carrier compensation rates for ISP-bound traffic should be set at ILEC cost and should be symmetrical. A CLEC should be able to rebut the presumption of symmetry by showing that its costs are higher than the ILEC's.
  - Inter-carrier compensation rates for ISP-bound traffic should be presumed to be equal to reciprocal compensation rates for transport and termination of telecommunications.
  - Inter-carrier compensation rates for ISP-bound traffic should be usage-sensitive and set on a per-minute basis.
  - State commission arbitration proceedings for inter-carrier compensation for ISP-bound traffic may be conducted separately from arbitration proceedings conducted pursuant to Section 252. Arbitration proceedings for inter-carrier compensation for ISP-bound traffic should be resolved within 60-90 days of the filing of a petition for arbitration.
  - A state commission arbitration decision adverse to a party should have collateral estoppel effect against that party in that state. This rule will minimize cost and delay by avoiding litigation when each subsequent CLEC seeks the same treatment for ISP-bound traffic established in the first arbitration decision in the state on this issue.
  - A state commission should be allowed to order interim inter-carrier compensation for ISP-bound traffic upon the filing of a petition for arbitration in order for the parties to begin to provide telecommunications service to ISPs. The interim inter-carrier compensation rate for ISP-bound traffic would be subject to a true-up following completion of the arbitration proceeding. The interim inter-carrier compensation rate should be:
    - The permanent rate established by a state commission for reciprocal compensation, or, if no such rate has been established

- A rate within the range of interim proxy reciprocal compensation rates set by the Commission – \$0.002 to \$0.004 per minute.

### CONCLUSION

The Commission should recognize that negotiations with ILECs to obtain interconnection are difficult already because of the imbalance of bargaining power between CLECs and ILECs and because ILECs have little incentive to allow new entrants into their monopoly markets. A system of compensation for telecommunications traffic to ISPs, in which the ILEC is likely to have to pay the CLEC serving the ISP (which should reflect the ILEC avoided cost), will be even more difficult to negotiate. The Commission should establish specific rules for inter-carrier compensation for ISP-bound traffic to be implemented in state commission arbitration proceedings. Such arbitration proceedings would be conducted outside the requirements of Section 251 and 252; accordingly, the Commission may tailor the rules narrowly to minimize the costs to conduct the state commission arbitration and to facilitate resolution of the dispute.

Respectfully submitted,



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Dated: April 12, 1999

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**CERTIFICATE OF SERVICE**

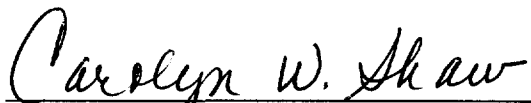
I, Carolyn W. Shaw, hereby certify that on this 12<sup>th</sup> day of April 1999, copies of the foregoing Comments of CoreComm Limited were delivered by hand and first class mail to the following:

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